GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute :—Industrial Dispute between the Workmen and the Management of Nav Bharat Slate Works, Bagalkot.

Award of the Labour Court, Hubli—Published.

Read the following papers :—

(1) Letter No. 780/68-69, dated 2nd December 1968 from Shri D. Ponnurangam, Presiding Officer, Labour Court, Hubli.

IN THE LABOUR COURT, AT HUBLI

Reference. (I) (LC) Claim No. 75/1967.

Present : Sri D. Ponnurangam, B.A., B.L. ... *Presiding Officer*

Dated 28th November 1968.

Claimants :—

The Workmen and the Management of Nav Bharat Slate Works, Bagalkot, sponsored by the General Secretary, Nav Bharat Slate Factory Workers Union, Venkatpeth, Bagalkot.

Vs.

Respondent :—

The Management, Nav Bharat Slate Works, Bagalkot.

The Government of Mysore in its order of reference No. FCL 336 LLD 67, dated 23rd September 1967 referred to this Court for adjudication the dispute between the workmen and the management of Bagalkot Nav Bharat Slate Works, Bagalkot mentioning the following points of dispute :

(1) Did the workmen of the Nav Bharat Slate Works, Bagalkot resort to a strike on 18th February 1967 ? If so, was the strike illegal ?

(2) Is the employer of the Nav Bharat Slate Works, Bagalkot justified in dismissing from service the twenty-two workmen mentioned in the Annexure. Are the

said twenty-two workmen entitled to reinstatement with full wages for the entire period of involuntary unemployment? If not, to what other reliefs are they entitled?

2. The facts of the case in brief are as follows: Out of the 2' workmen, whose names are given in the Schedule to this adjudication, 11 workmen were suspended on 21st February 1967 pending enquiry, while the others, for having gone on strike on 18th February 1967. According to the Union of workers, all these 22 workmen submitted their explanations to the show-cause notices issued to them and that on 8th May 1967 they were dismissed by the management illegally. They pray for the reinstatement with back wages. According to the management, these workers had gone on strike deliberately on 18th February 1967 knowing well that that day was a working day and that they were intimate by a notice put on the notice board of the factory that 18th February 1967 was a working day and that these workmen would be given the substituted holiday on 19th February 1967, that these workmen knew of the substituted holiday, but they with a view to defy discipline, by a concerted action, went on strike on 18th February 1967 without even notice. That domestic enquiries were held against these delinquent workmen giving opportunities to them. That on due enquiries they were found guilty and hence, they were dismissed. Therefore, the management prays for the rejection of the demands of these workmen, for reinstatement.

3. After the receipt of the order of reference by this Court, the union of the I Party filed its statement of demands on 22nd December 1967 and the management filed its rejoinder on 9th January 1968.

4. When this dispute was pointed for hearing, the I Party union examined 3 witnesses as W. W. 1, W. W. 2 and W. W. 3 marking Exe. W-1 to W-15 and the evidence of the union was closed. The management has examined 2 witnesses as W. M. 1 and W. M. 2 and 10 documents were exhibited as Ex. M-1 to M-10 and the evidence of the management was closed. I have heard the arguments on behalf of both the parties and perused the records of this dispute.

5. The first point for consideration is whether the stoppage of the work by these workmen on 18th February 1967 was a strike and if so, was it an illegal strike.

6. It is not disputed that the workmen had the weekly holiday on every Saturday. It is also not disputed that 18th February 1967 fell on a Saturday. The stand taken by the I Party union is that 18th February 1967 being a Saturday, it was the usual weekly holiday and hence these workmen did not report to duty; as that Saturday (18th February 1967) was a weekly off for all the workers of the II Party factory. Therefore, there was no strike. On the other hand, the contention made on behalf of the management is that 19th February 1967 was the General Election day and that therefore, 18th February 1967 was a working day substituted by 19th February 1967 as a holiday; that prior to 18th February 1967 a notice was affixed in the II Party factory's notice board informing the workers that 18th February 1967 was a working day that working day was substituted by the holiday on 19th February 1967 as a substituted weekly holiday and that such a notice was affixed on 15th February 1967.

7. Regarding the notice that 18th February 1967 was a working day, the workman Allabax, who had put in 9 years service with the II Party has deposed that the allegation of the management that the management had substituted the weekly holiday (18th February 1967), by giving due notice is false. But in his cross-examination, this witness admits that in the II Party's factory there was a notice-board and that notices were affixed to the factory notice-board and that such notices were affixed by both in English and in Kannada to enable the workers to know the contents of the notices. He has further deposed that he had not seen the notice-board of the management dated 15th February 1967 to the effect that the workers should work on 18th February 1967. He also admits that on 18th February 1967 he did not report to duty. The 2nd witness, who has been examined on behalf of the union is Khalasi (W. W. 2), is the General Secretary of the I Party Union. Regarding the information of 18th February 1967 being a working day, he has given the following evidence:

> "I have no idea of the affixing of notice Ex. M–1 on the factory notice board. No initimation was sent by the II Party to the I Party union to the effect that the workmen who worked on should work on 18th February 1967 as a substituted holiday in respect of 19th February 1967."

In his cross-examination, he admits that under the Factories Act weekly off can be substituted by another

8. The third witness, who has been examined by the union is W. W. 3, Vithal, a workman who has put in 5 years of service with the II Party factory. He has given evidence that on 18th February 1967 he had not reported t[illegible]y and that he had not seen any notice in the factory's notice board informing the workers that 18th February 1967 was a substituted working day by 19th February 1967 as a holiday. A careful perusal of the evidence of the I Party will show that these witnesses plead that they had not seen that notice in question. They do not deny the factum that the notice was exhibited.

9. The II Party management has exemined 2 witnesses, out of them the first witness is one Sri Sheshadri, the Chief Technician in this factory. He has given evidence that on 15th February 1967, the notice intimating the workers that 18th February 1967 was a working day and that day was substituted by 19th February 1967 as a substituted weekly holiday was affixed in the II Party factory's notice-board. He has also deposed as follows in respec of what the workmen did on Friday (17th February 1967).

> "On the fore-noon o Friday, the workers of my section were murmering. When I noticed them murmering during work, I questioned what was the ma ter. They told me that they would not come for work on Saturday. I told them that the furnace was a continuous one and that if it does not work it would be damaged. Then, in the evening, at the time of muster roll I told each and every worker to attend work on 18th February 1967; but he witness Vithal Karade told me that he would not come for duty on 18th February 1967."

10. The aforesaid evidence of Sheshadri remains unchallenged in the records as there is no cross-examination on this point. The next witness on behalf of the management is Sri Vasant Malakangouda Patil, who is the Estate Manager of the II Party. He corroborates the evidence of Sheshadri in material particulars regarding the affixing of notice on 15th February 1967 in the factory notice-board. He has also given evidence that notice affixed was Ex.M-1 dated 15th February 1967 and that Ex. M-1 the notice which was affixed on the notice board. He further deposes that except 5 workers of anamel section, nobody

came for work on 18th February 1967. He has further deposed as follows:—

> "On 17th February 1967 the workers made galata stating that 18th February 1967 being a holiday how could the management make it a working day and they demanded weekly off on 18th February 1967 and the election day on 19th February 1967."

11 From the evidence placed on record, I am satisfied that the workmen of the II Party factory had previous notice that 18th February 1967 would be a working day and that 19th February 1967 would be the substituted holiday in lieu of the General Election. I am also satisfied that workers having had the previous knowledge that that Saturday was a working day, deliberately did not report to work on that day as directed by the management.

12 The important point for consideration is whether the management had the right to ask its workers to report to duty on a weekly off and whether the workers are under a statutory duty comply with such a direction.

13 Sec. 52 of the Factories Act, 1948 provides that the management has got a right to direct its workers to work on weekly holiday, if the management delivers a notice at the office of the Inspector of its intention to require the workers to work on weekly holiday and that day to be substituted and also displaying a notice to that effect in the factory.

14 In the present dispute the aforesaid conditions provided U/s. 52 have been satisfied as could be seen from the notice Ex. M-1 and also Ex. M-7 both dated 15th February 1967 Ex. M-1 is the original and Ex. M-7 is the copy of the same notice. A perusal of this notice Ex. M-1 will show that the intention of having 18th February 1967 as a working day and to have 19th February 1967 as a substituted holiday, has been sent to the Inspector of Factory, Gulbarga Division, Gulbarga by the management and a notice in Kannada has been affixed to the Notice Board. Ex. M-8 is the reply of the Inspector to the management with the following note:

> "Weekly holiday substitution Nineteenth instant regular.
> Factory Inspector."

From the evidence placed on behalf of the management, I am convinced that the II Party has complied with the requirements of Sec. 52 of the Factories Act, 1948. What is contemplated upon the worker U/s. 52 is not a vested right on the workers, it is only a protection to the workers by imposing a restriction on the employer against employing the workers on weekly holidays. It is a duty or an obligation cast on the part of the employer by virtue of which restriction a worker is given protection from the employer. Penal action can be taken against the employer if he violates the provisions of Sec. 52 as could be seen from Sec. 92 of the Factories Act. So, Sec. 52 is merely a preventive measure taken by the legislature in favour of the workers by imposing restriction on the employer. That restriction on the employer is not unconditional. Such a weekly off may be substituted within 3 days before or after the weekly holiday as provided U/s. 52 of the Factories Act. The option to direct the workers on such a holiday is always on the employer, provided a substituted holiday is given in lieu of that weekly off having been converted into a working day. Such a direction given by the management in the instant case, in my opinion, should have been obeyed by the workers because the workers have no option to refuse to work on that day, particularly, in view of the fact that the substituted holiday had been given on 19th February 1967. The expression 'require' appearing in Sec. 52 of the Factories Act pre-supposes a right on the employer to direct the employees to work on a weekly off. That expression is mandatory in character, meaning 'Order' or "direct". In the present case dispute, the weekly off was on 18th February 1967, notice of a direction to work on that day was given by the management 3 days prior to 18th February 1967, that was on 15th February 1967, as could be seen from Exs. M-1 and M-7. The direction of the management asking the workers to work 18th February 1967 appears to be reasonable because 19th February 1967 was a General Election Day and that also fell on a Sunday.

15 It is not disputed by both the parties that 19th February 1967 was a poll-day, being General Election. Ex. M-6 is the notification, which had appeared in the news-paper 'Deccan Herald' on 11th February 1967, in which it is stated as follows: (only relevant portion given).

> "The Mysore Government has requested the management of the various industrial units in different parts of the State to declare a holiday on the day of the poll and substitute it by working on any other Day U/s. 52 of the Factories Act, 1948".

16 It was in pursuance of the request of the State of Mysore as per the aforesaid notification, the II Party has sought to implement that request by converting the weekly holiday on 18th February 1967 to be the working day and substituting that day on 19th February 1967 and it has given direction to the workers in that behalf. The workers had admittedly not reported to duty on 18th February 1967 and therefore, their conduct in not reporting to duty on 18th February 1967, in my opinion, will be deemed to be a strike. They have not given any previous notice for such a strike to the management. Hence, such a strike has been made by the workers of the I Party Union in violation of the provisions of the Industrial Disputes, Act, 1947 and consequently, it is an illegal strike. Therefore, I hold that the strike staged out by the delinquent workers on 18th February 1967 is an illegal strike within the meaning of the I.D. Act.

17 The next point for consideration is whether the II Party management is justified in dismissing the 22 workmen, whose names are given in the schedule in this adjudication, and whether these workers are entitled to reinstatement or any other relief.

18 It is seen from the evidence adduced by both the sides that enquiry notices were sent to the delinquent workers; that enquiries were made; and witnesses were examined. I am satisfied that the domestic enquiries were conducted in this behalf were fair and impartial having been held in consonance with justice, equity and fair play. The enquiry papers have been filed by the II Party as Ex. M-9 series in this Court. I have no reason to hold that the domestic enquiries were unreasonable or unfair. The decision of the management that these workers were guilty appears to be reasonable and fair under the circumstances of this case. Therefore, I hold that the II Party management has employer is perfectly justified in dismissing these 22 workmen from the Service. I further hold that these 22 workmen are not entitled to reinstatement and they are also not entitled to any other relief. For the foregoing reasons, I pass the following award.

AWARD

19 The demands of the I Part Union are hereby rejected, and the 22 scheduled workmen are not entitled to re-instatement, not to any other relief, as the II Party management is just fied in dismissing them from service. Under these circumstances of this case, I direct each party to bear its own costs.

20 I also direct the office of this Court to submit true copies of this adjudication to the Secretary to Government of Mysore, Food, Civil Supplies and Labour Department, Mysore Government Secretariat, Vidhana Soudha, Bangalore-1 as required U/s. 15 of the I.D. Act.

Dictated to the Stenographer, transcribed and typed by him and then pronounced by me in open Court this 28th day of November, 1968 at Hubli.

Sd/-

(D. PONNURANGAM,)
Presiding Officer,
Labour Court,
Hubli
28-11-1968

"True Copy"

D. PONNURANGAM,
Presiding Officer,
Labour Court,
Hubli.